

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JUAN KERBOW, Individually and for Others  
Similarly Situated,

*Plaintiff,*

V.

ADVANCED SOLIDS CONTROL, LLC,

*Defendant.*

CASE NO.

## JURY TRIAL DEMANDED

## COLLECTIVE ACTION

## COMPLAINT

## SUMMARY

1. Advanced Solids Control, LLC (Advanced) does not pay its solids control technicians overtime as required by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the FLSA). Instead, Advanced improperly classifies them as independent contractors and pays them a set amount for each shift worked. Because these workers are employees under the FLSA, Juan Kerbow and the other misclassified solids control technicians are entitled to recover their unpaid overtime as well as other damages.

## JURISDICTION AND VENUE

2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

3. Venue is proper because Advanced is headquartered in Corpus Christi and many of the relevant facts occurred here.

## **PARTIES**

4. Kerbow worked for Advanced as a solids control technician. His written consent is attached.

5. Advanced is a Texas company headquartered in Corpus Christi. It operates in Texas and New Mexico, doing millions of dollars' worth of business each year in Texas and New Mexico. Advanced's employees routinely use, handle, sell, or work on vehicles, filters, centrifuges, dryers, shakers, computers, telephones, and hand tools. These items were produced for interstate commerce or actually traveled in interstate commerce. Advanced is covered by the FLSA and has been for each of the last 3 years. Advanced is therefore obligated to pay its non-exempt employees overtime under the FLSA.

6. The "FLSA Class Members" are all shift-rate solids control technicians who worked for Advanced while classified as independent contractors in the last 3 years.

## **FACTS**

7. Advanced is an oilfield service company specializing in solids control for land based oil and gas drilling operations."

8. Solids control is a technique used on drilling rigs to separate drilling fluid ("mud") from the solids crushed by the drill bit and carried up to the surface in the drilling fluid. The solids are removed at the surface using screens, centrifuges, dryers, and shakers. The clean mud is recycled back down the hole to the drill bit and the rock, sand, and other particles that were removed from the mud are discarded to prevent damage to expensive equipment.

9. Advanced provides complete solids control service to its customers. This means Advanced provides its clients with the machinery, products, and personnel, necessary to perform solids control. The personnel who perform Advanced's core service are known as "solids control

technicians.”<sup>1</sup> Solids control technicians set up, service, and operate Advanced’s mud cleaning equipment, including screens, centrifuges, dryers, and shakers.

10. Advanced’s solids control technicians perform the primary type of work Advanced performs for its customers.

11. The work Advanced’s solids control technicians perform is an essential part of the service Advanced performs for its customers. Advanced promises its clients that its solids control technicians will provide quality service and Advanced takes a number of steps to ensure quality control.

12. Advanced’s solids control technicians rely on Advanced for their work. Advanced determined where its solids control technicians worked and how they performed their duties.

13. Advanced sets solids control technicians’ hours based on customer need.

14. Advanced’s solids control technicians work exclusively for Advanced during their employment. Since they work 12 hours a day, 7 days a week, when they are “on,” Advanced’s solids control technicians cannot, as a practical matter, work anywhere else.

15. The solids control technicians generally work for Advanced for months on end. They can terminate their employment with Advanced without penalty.

16. While working for Advanced, the solids control technicians are not permitted to hire other workers to perform their jobs for them.

17. The solids control technicians do not employ any staff, nor do they maintain independent places of business.

18. Advanced provides the machines and equipment (such as centrifuges, dryers, shakers, and screens), as well as the supplies, its solids control technicians use to perform their work. While they

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<sup>1</sup> Solids control technicians are sometimes referred to as “solids control consultants,” “solids control techs,” “solids control hands,” and “sit hands.”

are working, the solids control technicians use Advanced's equipment. Advanced's investment in the machines and equipment used by each solids control technician far exceeds any investment by any solids control technician.

19. The solids control technicians do not provide any material portion of the required equipment or any of the necessary products to perform their jobs.

20. Advanced's solids control technicians are paid based on the shifts they work. They cannot earn a "profit" by exercising managerial skill, and they are required to work the hours required by Advanced (or its client) each day. The solids control technicians cannot suffer a loss of capital investment. Their only earning opportunity was based on the number of shifts they were allowed to work, which was controlled by Advanced.

21. Advanced pays the solids control technicians in return for their labor.

22. Advanced covers the solids control technicians as its "employees" on its workers' compensation policy(ies).

23. Advanced decided to treat its solids control technicians as independent contractors.

24. Advanced maintains control over pricing of the services its solids control technicians provide. Advanced negotiates the rates charged to its clients for the solids control technicians' services and collects payment for these services directly from its clients.

25. Advanced made the large capital investments in vehicles, buildings, machines, equipment, tools, and supplies, in order to allow it to provide solids control services. Its solids control technicians do not. Advanced incurs operating expenses like rent, payroll, marketing, and insurance. With comparatively minor exceptions, like contributing to the cost of workers' compensation, its solids control technicians do not incur such operating expenses.

26. Advanced reimbursed its solids control technicians for work related expenses.

27. Advanced keeps records of the hours its solids control technicians work. It also keeps records of the amount of pay solids control technicians receive and the number of shifts they work.

28. Despite knowing the FLSA's requirements and that its solids control technicians regularly worked more than 40 hours in a workweek, Advanced does not pay them overtime.

29. On August 30, 2016, Advanced agreed to toll the statute of limitations for Kerbow and opt-in FLSA Class Members Donovan Garcia, Billy Jackson, Octaviano Luna, Joey Franklin, Stephen Mayo, and Andrew Wallace. Advanced's attempt to not honor this agreement prompted the filing of this lawsuit.

### **COLLECTIVE ACTION ALLEGATIONS**

30. In addition to Kerbow, Advanced employed dozens of other solids control technicians who worked over forty hours per week with no overtime pay, were paid a shift-rate, and were classified – improperly – as independent contractors. These FLSA Class Members performed the job duties described above and they were subjected to the same unlawful policies. The FLSA Class Members are similarly situated to Kerbow.

31. The FLSA Class Members should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b). Therefore, the class is properly defined as:

**All shift-rate solids control technicians who worked for Advanced while classified as independent contractors in the last 3 years.**

### **CAUSE OF ACTION - VIOLATION OF THE FLSA**

32. By failing to pay Kerbow and the FLSA Class Members overtime at one and one-half times their regular rates, Advanced violated the FLSA.

33. Advanced owes Kerbow and the FLSA Class Members overtime wages equal to one-half their regular rates for each overtime hour worked during the last three years.

34. Advanced knew, or showed reckless disregard for whether, its failure to pay overtime violated the FLSA. Its failure to pay overtime to Kerbow and the FLSA Class Members is willful.

35. Advanced owes Kerbow and the FLSA Class Members for an amount equal to all unpaid overtime wages as well as liquidated damages.

36. Kerbow and the FLSA Class Members are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

### **PRAYER**

Kerbow prays for relief as follows:

1. An order allowing this action to proceed as a collective action under the FLSA and directing notice to the FLSA Class Members;
2. Judgment awarding Kerbow and the FLSA Class Members all unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;
3. Judgment awarding Kerbow and the New Mexico Class Members all unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the NMMWA;
4. An award of post-judgment interest on all amounts awarded at the highest rate allowable by law; and
5. All such other and further relief that Plaintiff and the FLSA Class Members are justly entitled.

Respectfully submitted,

**BRUCKNER BURCH PLLC**

/s/ **David I. Moulton**

By: \_\_\_\_\_

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